

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JESSICA MOORE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

GERBER PRODUCTS COMPANY
(d/b/a Nestlé Nutrition, Nestlé Infant
Nutrition, or Nestlé Nutrition North
America),

Defendant.

CASE NO.: 2:21-cv-02516-CCC-MF

Hon. Claire C. Cecchi

Motion Return Date: April 19, 2021

**DECLARATION OF GEORGINA M. DE LA PEÑA IN OPPOSITION TO
PLAINTIFF JESSICA MOORE’S CROSS-MOTION TO TRANSFER ALL
GERBER CLAIMS TO THE EASTERN DISTRICT OF VIRGINIA**

I, Georgina M. de la Peña hereby declare and state, as follows:

1. I have been employed at Gerber® Products Company (“Gerber”) since September 15, 2003. Since August 12, 2013, I have held the position of Vice President, Human Resources, Nestlé Infant Nutrition. Prior to being promoted to VP, Human Resources, Nestlé Infant Nutrition, I held various positions within Gerber, including serving as Vice President, Human Resources, North America, and Vice President, Nestlé HealthCare Nutrition North America.

2. As VP, Human Resources, Nestlé Infant Nutrition, I am responsible for the people agenda within Nestlé Infant Nutrition US and the driving force behind creation and implementation of the people plan aligned with business strategy, to represent the complete HR Service / Value Chain for Infant Nutrition US. In this position I lead people strategies and oversee a team of direct reports. I am responsible for ensuring that enterprise strategies and plans are connected with market needs and functional leaders so that value is being delivered within each part of the organization. I am also responsible for strategic and operational workforce plans that ensure employees and functional structures are in the right place, at the right time, at the right cost.

3. In preparing this declaration, I have relied upon my personal knowledge of Gerber’s policies, procedures, and operational and personnel history, as well as my review of Gerber’s business records, maintained under my

supervision and control, including memoranda, reports, and records of acts, events, and transactions created and maintained in the regular course of Gerber's business at or near the time of the act, event, or transaction. The records or reports on which I relied are described herein.

I. Gerber's Presence In New Jersey

4. In or around 2007, Gerber was acquired by Nestlé Holdings, Inc. Prior to that acquisition, Gerber's headquarters was located in Parsippany, New Jersey. Following the acquisition by Nestlé Holdings, Inc., Gerber's headquarters was located in Florham Park, New Jersey.

5. In April 2018, Gerber announced that it planned to relocate its headquarters from Florham Park, New Jersey to Arlington, Virginia.

6. Gerber officially closed its New Jersey office on April 1, 2019. The relocation process was not completed until December 31, 2019.

7. During the time that Gerber was located in Florham Park, New Jersey (approximately 2007 to 2018), its Regulatory, Medical-Scientific, Sales, Marketing and Legal departments, along with other departments, were located there.

8. When Gerber began the process of moving its headquarters from New Jersey to Arlington, Virginia in 2019, it permitted employees to work remotely, where feasible, from New Jersey while the company transitioned its headquarters to Virginia.

9. During the relocation period, employees in Gerber's Regulatory, Medical-Scientific, Sales, Marketing and Legal departments continued to work from New Jersey.

10. At the time that Gerber began its transition from New Jersey to Virginia, it employed approximately 146 people in New Jersey. After Gerber began its transition from New Jersey to Virginia in April 2019, approximately 75 employees declined to relocate to Virginia, and an additional approximately 14 did not receive offers to remain with the company and relocate. These former employees generally remained in New Jersey. Even after the relocation process was complete, several Gerber employees from Finance, Legal, Medical Science and Regulatory Unit, Retail Sales and Supply Chain continued to work from New Jersey.

II. Gerber's Advertising and Labeling Conduct and Decision-making Relevant to the Claims Occurred in New Jersey

11. I understand that plaintiffs allege that Gerber engaged in misleading and/or deceptive labeling and advertising of Gerber's baby food products. I further understand that the timeframe for this alleged activity dates back to at least 2015. Gerber was located in New Jersey for approximately four to five out of the relevant six-year time period.

12. During this timeframe, Gerber made the majority of its decisions concerning marketing, labeling, and sales of baby food products, including

decisions by the key members of the marketing team, in New Jersey. Several of the employees who worked on labeling and advertising of Gerber's baby food products did not relocate to Virginia.

13. During this same timeframe, Gerber worked with several third-party advertising and marketing agencies in connection with the advertising and labeling of Gerber's baby food products. Many of these third-party advertising and marketing agencies were and are located in or close to New Jersey.

III. Gerber Conducted the Regulatory Review of the Subject Products in New Jersey

14. Similarly, Gerber performed its regulatory review of its baby food products while Gerber was located in New Jersey for approximately four to five out of the last six years.

15. In connection with Gerber's regulatory review process, Gerber relied on work conducted by a third party to test some of its baby food products and their ingredients for the presence and levels of heavy metals in those products. That third party is located in New Jersey.

IV. Gerber Employees Still Work In New Jersey

16. Despite its move to Virginia, several Gerber employees continue to work full-time in New Jersey, including members of Gerber's Medical Science and Regulatory Unit.

V. Other Key Witnesses Are Located in New Jersey

17. In light of Gerber's relocation, certain former Gerber employees who possess information regarding Gerber's marketing, labeling, and sales of baby food products, and the presence/absence of, levels of, and testing for, heavy metals in Gerber's baby food products and ingredients in those products still reside in New Jersey.

VI. Gerber Prefers that the Pending Cases Concerning the Alleged Presence of Heavy Metals in Gerber's Baby Food Products Proceed in New Jersey

18. Gerber prefers to litigate the pending cases concerning the alleged presence of heavy metals in Gerber's baby food products in New Jersey because some of its key employees and former employees still maintain residences there. It would therefore be more convenient for these individual to appear at any hearings or trial in New Jersey. Further, third parties who may have information relating to marketing, labeling, and sales of baby food products, and the presence/absence of, levels of, and testing for, heavy metals in Gerber's baby food products and ingredients in those products, are located in, or very near, this Court. For these reasons, among others, Gerber considers New Jersey to be the most convenient district to litigate the pending cases concerning the alleged presence of heavy metals in Gerber's baby food products.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on April 5, 2021, at Arlington, Virginia.



GEORGINA M. DE LA PEÑA